

Senate File 2151 - Introduced

SENATE FILE 2151

BY D. JOHNSON

A BILL FOR

1 An Act relating to animal feeding operations, including
2 by providing for when two or more confinement feeding
3 operations are deemed to be a single operation, making
4 penalties applicable, and including effective date and
5 applicability provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 459.102, Code 2018, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 8A. *a.* "*Business entity*" means a person
4 organized as any form of partnership, limited partnership, or
5 limited liability limited partnership described in chapter
6 488; limited liability company as described in chapter 489;
7 a corporation as described in chapter 490, 491, or 504; an
8 association as described in chapter 497, 498, and 499; a
9 cooperative described in chapter 501; a cooperative association
10 described in chapter 501A; an agricultural cooperative
11 association as defined in section 502.102; an unincorporated
12 nonprofit association as described in chapter 502; or any other
13 entity commonly referred to as an investment company, joint
14 stock company, joint stock association, or trust, including but
15 not limited to a business trust.

16 *b.* "*Business entity*" includes a person described in
17 paragraph "*a*" regardless of whether the person is organized
18 in this state under any of those provisions referred to in
19 paragraph "*a*" or is otherwise authorized to transact business
20 in this state under any of those provisions referred to in
21 paragraph "*a*".

22 NEW SUBSECTION. 41A. "*Operation of law*" means a transfer
23 by inheritance, devise or bequest, court order, dissolution
24 decree, order in bankruptcy, insolvency, replevin, foreclosure,
25 execution sale, the execution of a judgment, the foreclosure
26 of a real estate mortgage, the forfeiture of a real estate
27 contract, or a transfer resulting from a decree for specific
28 performance.

29 Sec. 2. Section 459.201, subsection 1, Code 2018, is amended
30 by striking the subsection and inserting in lieu thereof the
31 following:

32 1. Two or more animal feeding operations under common
33 ownership or management are deemed to be a single animal
34 feeding operation if they are adjacent or utilize a common
35 system for manure storage. In addition, two or more related

1 confinement feeding operations are deemed to be a single
2 confinement feeding operation as provided in section 459.201A.
3 Sec. 3. Section 459.201, subsection 3, Code 2018, is amended
4 to read as follows:

5 3. a. In calculating the animal unit capacity of a
6 confinement feeding operation, the animal unit capacity shall
7 include the animal unit capacity of all confinement feeding
8 operation buildings which are part of the confinement feeding
9 operation, unless a confinement feeding operation building has
10 been abandoned.

11 b. Unless expressly stated otherwise in this subchapter,
12 the animal units of all confinement feeding operations that are
13 related and deemed to be a single confinement feeding operation
14 shall be combined when calculating the animal unit capacity of
15 any one of the confinement feeding operations.

16 Sec. 4. NEW SECTION. **459.201A Special terms — related**
17 **confinement feeding operations.**

18 1. Two or more confinement feeding operations are related
19 and deemed to be a single confinement feeding operation, if all
20 of the following apply:

21 a. A confinement feeding operation structure that is part
22 of one confinement feeding operation is separated by less than
23 two thousand five hundred feet from a confinement feeding
24 operation structure that is part of the other confinement
25 feeding operation.

26 b. Any of the following apply:

27 (1) The confinement feeding operations utilize a
28 common system for manure storage or common area for manure
29 application.

30 (2) The same person holds an interest in the real property
31 where the confinement feeding operations are sited. The person
32 may hold a legal interest or equitable interest in the real
33 property.

34 (a) In determining whether the same person holds an
35 interest in the real property where the two confinement feeding

1 operations are sited, an interest in the real property may be
2 held by the person in any of the following forms:

3 (i) Legal title, including as a joint tenant or tenant in
4 common, or the holder of an interest for life or term of years.

5 (ii) Leasehold, including as a lessor or lessee.

6 (iii) Real estate contract, including in cases in which the
7 person is a vendor or vendee.

8 (iv) Equitable title, including as a settlor, trustee, or
9 beneficiary.

10 (v) Easement, including as the owner of the dominant estate
11 or servient estate.

12 (b) If the person is a business entity, the business
13 entity's interest in the real property is attributable to any
14 of the following:

15 (i) A partner, limited partner, shareholder, member,
16 settlor, trustee, beneficiary, or other equity holder of the
17 business entity.

18 (ii) Any officer, manager, or employee of the business
19 entity.

20 (c) A person's real property interest is attributable to
21 the person's spouse, parent, grandparent, lineal ascendant of
22 a grandparent or spouse and any other lineal descendant of
23 the grandparent or spouse, or a person acting in a fiduciary
24 capacity for a related person.

25 (d) A subsidiary or affiliate of a business entity shall be
26 deemed to be the same business entity.

27 (e) A person's interest in a fixture that is attached to the
28 real property where a confinement feeding operation is sited,
29 including a confinement feeding operation structure, shall be
30 deemed to be an interest in the confinement feeding operation.

31 (f) A person's property interest does not include the
32 acquisition of property by any of the following:

33 (i) Operation of law.

34 (ii) A bona fide encumbrance taken for purposes of security,
35 including but not limited to a mortgage or deed of trust.

1 (iii) Under a contract in which the other party is a
2 government entity.

3 Sec. 5. Section 459.203, unnumbered paragraph 1, Code 2018,
4 is amended to read as follows:

5 A confinement feeding operation constructed or expanded
6 prior to the date that a distance requirement became effective
7 under [section 459.202](#) and which does not comply with the
8 section's distance requirement may continue to operate
9 regardless of the distance requirement. The In addition and
10 except as provided in section 459.203A, such confinement
11 feeding operation may be expanded by the construction or
12 expansion of a confinement feeding operation structure, if any
13 of the following applies:

14 Sec. 6. NEW SECTION. **459.203A Related confinement**
15 **feeding operations deemed to be the same operation expansion of**
16 **confinement feeding operations.**

17 1. If two or more confinement feeding operations are
18 related and deemed to be a single confinement feeding operation
19 pursuant to sections 459.201 and 459.201A, neither confinement
20 feeding operation shall be expanded by the construction or
21 expansion of a confinement feeding operation structure on or
22 after the effective date of this Act, unless the confinement
23 feeding operation structure complies with the distance
24 requirements applying to that structure as provided in section
25 459.202, subsections 4 and 5.

26 2. Notwithstanding subsection 1, a confinement feeding
27 operation structure may be expanded by replacing one or more
28 unformed manure storage structures with one or more formed
29 manure storage structures, if all of the following apply:

30 a. The animal weight capacity or animal unit capacity,
31 whichever is applicable, is not increased for that portion of
32 the confinement feeding operation that utilizes all replacement
33 formed manure storage structures.

34 b. The use of each replaced unformed manure storage
35 structure is discontinued within one year after the

1 construction of the replacement formed manure storage
2 structure.

3 *c.* The capacity of all replacement formed manure storage
4 structures does not exceed the capacity required to store
5 manure produced by that portion of the confinement feeding
6 operation that had utilized all replaced unformed manure
7 storage structures.

8 *d.* The replacement formed manure storage structure is not
9 closer to an object or location benefiting from a separation
10 distance than the separation distance between the replaced
11 unformed manure storage structure and the same object or
12 location as required in section 459.202.

13 Sec. 7. Section 459.205, subsection 1, Code 2018, is amended
14 to read as follows:

15 1. A confinement feeding operation structure, if the
16 structure is part of a confinement feeding operation ~~which~~ that
17 qualifies as a small animal feeding operation. However, this
18 subsection shall not apply ~~if~~ to any of the following:

19 *a.* ~~confinement feeding operation structure is an~~ An unformed
20 manure storage structure.

21 *b.* Two or more animal feeding operations that are deemed to
22 be a single animal feeding operation under section 459.201, if
23 the combined animal unit capacity of the confinement feeding
24 operations is more than five hundred animal units.

25 *c.* Two or more related confinement feeding operations that
26 are deemed to be a single confinement feeding operation under
27 sections 459.201 and 459.201A, if the combined animal unit
28 capacity of the related confinement feeding operations is more
29 than five hundred animal units.

30 Sec. 8. Section 459.301, subsection 1, Code 2018, is amended
31 by striking the subsection and inserting in lieu thereof the
32 following:

33 1. Two or more animal feeding operations under common
34 ownership or management are deemed to be a single animal
35 feeding operation if they are adjacent or utilize a common

1 area or system for manure application. In addition, two or
2 more related confinement feeding operations are deemed to be
3 a single confinement feeding operation in the same manner as
4 two confinement feeding operations are determined to be related
5 under section 459.201A.

6 Sec. 9. Section 459.301, subsection 3, Code 2018, is amended
7 by adding the following new paragraph:

8 NEW PARAGRAPH. *c.* Unless expressly stated otherwise
9 in this subchapter, the animal units of all confinement
10 feeding operations that are related and deemed to be the
11 same confinement feeding operation shall be combined when
12 calculating the animal unit capacity of any one of the
13 confinement feeding operations.

14 Sec. 10. Section 459.312, subsection 2, Code 2018, is
15 amended to read as follows:

16 2. *a.* Not more than one confinement feeding operation shall
17 be covered by a single manure management plan.

18 *b.* If two or more confinement feeding operations are deemed
19 to be a single confinement feeding operation under section
20 459.301, the department may require that a separate manure
21 management plan cover each confinement feeding operation.

22 Sec. 11. Section 459.317, subsection 1, paragraph b, Code
23 2018, is amended by striking the paragraph.

24 Sec. 12. EFFECTIVE DATE. This Act, being deemed of
25 immediate importance, takes effect upon enactment.

26 Sec. 13. APPLICABILITY. This Act shall not apply to a
27 person who has begun construction of a confinement feeding
28 operation structure prior to the effective date of this Act.

29 EXPLANATION

30 The inclusion of this explanation does not constitute agreement with
31 the explanation's substance by the members of the general assembly.

32 BILL'S PROVISIONS — GENERAL. This bill amends the "Animal
33 Agriculture Compliance Act" (Code chapter 459) which part
34 provides for the regulation of animal feeding operations where
35 agricultural animals are maintained for at least 45 days in

1 any 12-month period and includes open feedlots and confinement
2 feeding operations (operations) including associated
3 confinement feeding operation structures (structures), such
4 as buildings or manure storage structures. The Code chapter
5 is administered and enforced by the department of natural
6 resources (DNR). Generally, regulations vary based on the size
7 of an operation measured by its animal unit capacity (AUC).

8 BILL'S PROVISIONS — RELATED CONFINEMENT FEEDING OPERATIONS.

9 The bill provides that for purposes of administering and
10 enforcing Code chapter 459, subchapter II, providing for air
11 quality regulations and Code chapter 459, subchapter III,
12 providing for water quality regulations, two or more operations
13 are deemed to be a single operation if they are related. The
14 operations are related if a structure that is part of one
15 operation is separated by less than 2,500 feet from a structure
16 that is part of the other operation and the same person holds
17 a legal or equitable interest in the real property where the
18 operations are located. If the person is a business entity,
19 the business entity's interest is attributable to any person
20 who owns an interest in the entity or who is an employee,
21 manager, or officer of the entity. A person's interest is also
22 attributable to a relative (e.g., spouse, child, or brother or
23 sister). A person's interest does not include the acquisition
24 of property by a number of devices including by operation of
25 law, an encumbrance taken as a security, or under contract with
26 a government entity.

27 BACKGROUND — CURRENT LAW — ADJACENCY. For purposes of air
28 quality regulation, two or more animal feeding operations under
29 common ownership or management are deemed to be a single animal
30 feeding operation if they are adjacent or utilize a common
31 system for manure storage and are separated within a minimum
32 distance from each other based on the size of the operation.
33 For purposes of water quality regulation, two or more animal
34 feeding operations under common ownership or management are
35 deemed to be a single operation if they are adjacent or utilize

1 a common area or system for manure disposal and are separated
2 by another set of separation distances again based on the size
3 of the operation.

4 BACKGROUND — AUC. AUC refers to a measurement used to
5 determine the maximum number of animal units that may be
6 maintained as part of an animal feeding operation at any one
7 time. In calculating AUC, a special equivalency factor is
8 assigned for each classification of confined animal.

9 BACKGROUND — ENFORCEMENT AND APPLICABLE CIVIL PENALTIES.
10 Compliance with a statutory regulation under the Code chapter
11 includes compliance with a rule adopted by DNR (Code section
12 459.103). Code section 459.602 provides for civil penalties
13 that may be assessed for violations of Code chapter 459,
14 subchapter II (air quality regulations). A violator is subject
15 to Code section 455B.109, which provides for the administrative
16 assessment of civil penalties of up to \$10,000. Code section
17 459.603 provides for civil penalties that may be assessed for
18 violations of Code chapter 459, subchapter III (water quality
19 regulations). A violator is subject to either Code section
20 455B.109 providing for the administrative assessment of civil
21 penalties or Code section 455B.191, which provides for a
22 general civil penalty assessed judicially of up to \$5,000.

23 EFFECTIVE DATE. The bill, if enacted, takes effect upon
24 enactment.